

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7539

Petition of Telephone Operating Company of Vermont )  
LLC, d/b/a FairPoint Communications, for Waiver or )  
Modification of Certain Requirements Under the )  
Performance Assurance Plan and Carrier to Carrier )  
Guidelines

Order entered: 7/22/2009

**ORDER OPENING INVESTIGATION AND NOTICE OF  
PREHEARING CONFERENCE**

**I. INTRODUCTION**

On June 10, 2009, Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint"), filed a petition with the Vermont Public Service Board ("Board") for a waiver or modification of the incentive payment requirements of the Performance Assurance Plan ("PAP") implemented by Agreement of the Board and Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), in Docket No. 6533. Specifically, FairPoint requests relief from the requirement to make PAP payments for the months of February, March and April 2009, and prospectively for May and June 2009. FairPoint asserts the waiver (or in the alternative, a modification to the PAP) is justified due to unprecedented and unforeseen issues, that were beyond FairPoint's control, related to the cutover from Verizon's systems that occurred in February 2009.

The Board hereby opens this investigation into FairPoint's request for a waiver pursuant to Section J of the PAP (or, in the alternative, a modification of the PAP).

**II. BACKGROUND**

In Docket No. 6533, Verizon Vermont sought Board support for its request to the Federal Communications Commission ("FCC") under Section 271 of the federal Telecommunications

Act of 1996, for permission to offer interstate services originating in Vermont. As part of its request, Verizon proposed the PAP, which was intended to help ensure that it would continue to provide high-quality services to competitive local exchange carriers ("CLECs") following the granting of relief under Section 271. The Board approved the PAP as a condition of its favorable recommendation to the FCC. Last year, we approved the acquisition of Verizon's northern New England properties by FairPoint. As a part of its proposal, FairPoint committed to assume all of the PAP obligations; we accepted and relied upon this commitment and expressly included it as a condition of our Order, so that FairPoint now has the obligation to comply with the PAP.<sup>1</sup>

The PAP is a self-executing enforcement plan that measures FairPoint's performance in the areas of Pre-order, Ordering, Provisioning, Maintenance and Repair, Billing, Network Performance and Change Control. The performance measures in the PAP, generally referred to as "metrics," are intended to reflect the range of services that CLECs obtain from FairPoint and to ensure that FairPoint provides adequate and nondiscriminatory service. Failure to meet the performance measures can lead to the payment of compensation to one or more CLECs (depending upon the metrics that are missed).

The PAP also permits FairPoint to seek a waiver of PAP payments due to certain events outside of its control. FairPoint has already submitted one such petition, asking for a waiver from certain metrics; the Board is now reviewing this request in Docket No. 7506. In this proceeding, FairPoint seeks a broader waiver that would apply both to PAP payments already made and certain prospective PAP payments. FairPoint also asserts that the waiver (or modification) would allow FairPoint to direct the PAP payment amounts towards fixing the problems that have triggered the PAP payments.

By this Order, we open the investigation requested by FairPoint. Based upon FairPoint's filing, it is not clear whether this docket contains factual issues that require resolution through hearings or whether, like FairPoint's waiver request in Docket No. 7506, it can be addressed through written filings. This issue will be discussed with the parties at the prehearing conference.

---

1. Docket 7270, Order of 2/15/08 at 54; Order of 12/21/07 at 219–220.

**III. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board (the "Board") of the State of Vermont that:

1. Pursuant to 30 V.S.A. Sections 203 and 209, an investigation is opened into Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint's"), request for a waiver of the PAP requirements.

2. Pursuant to 30 V.S.A. Section 10, the Board will conduct a Prehearing Conference in this matter on Monday, August 10, 2009, commencing at 10:30 A.M., at the Public Service Board Hearing Room, located on the 3<sup>rd</sup> Floor of the Chittenden Bank Building at 112 State Street in Montpelier, Vermont.

DATED at Montpelier, Vermont, this 22<sup>ND</sup> day of July, 2009.

<u>s/ James Volz</u>	)	
	)	
	)	
<u>s/ David C. Coen</u>	)	
	)	
	)	
<u>s/ John D. Burke</u>	)	

PUBLIC SERVICE  
BOARD  
OF VERMONT

OFFICE OF THE CLERK

FILED: July 22, 2009

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*